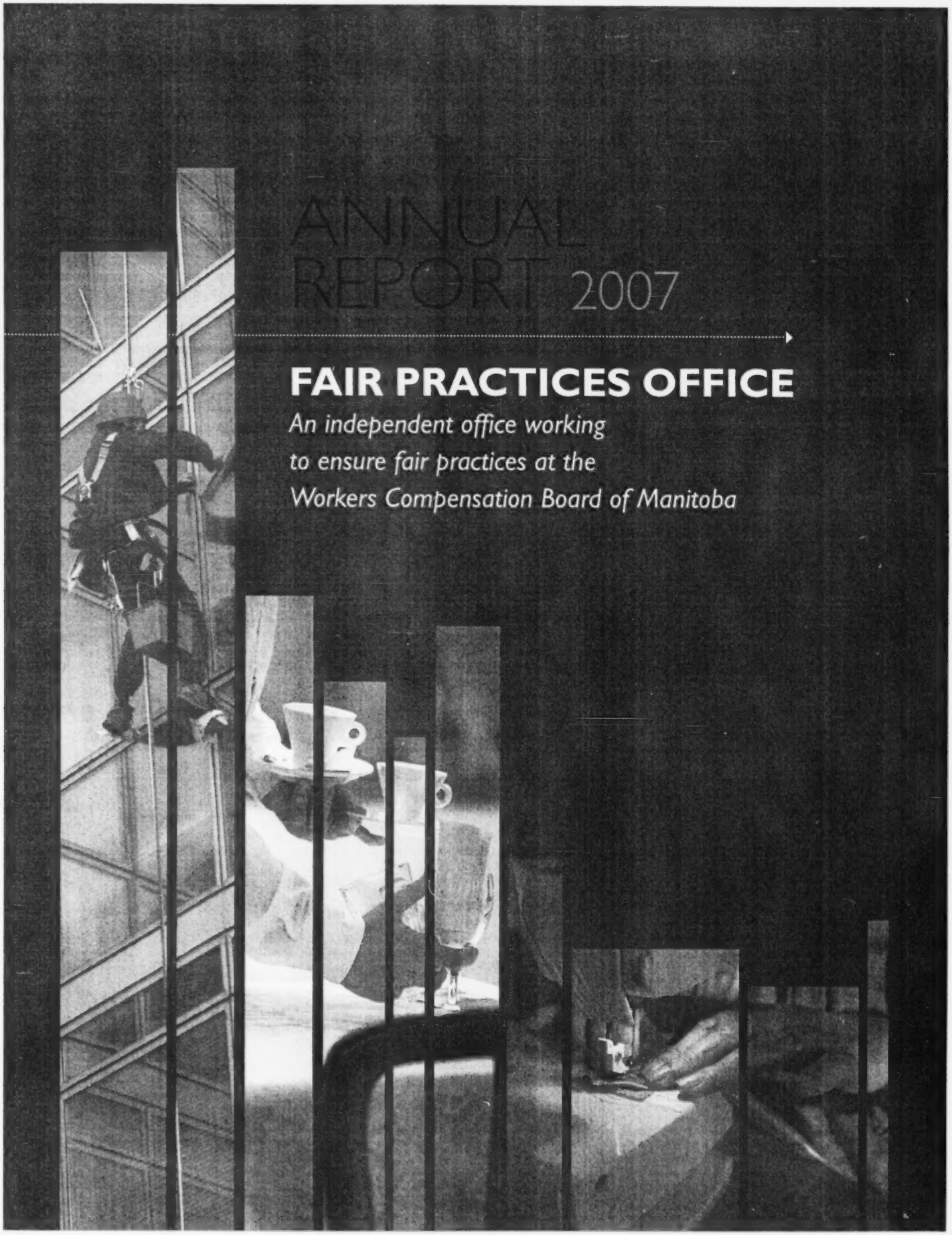


ANNUAL REPORT 2007

FAIR PRACTICES OFFICE

An independent office working to ensure fair practices at the Workers Compensation Board of Manitoba

Table of Contents

At a Glance

Greetings from the Fair Practices Advocate 3

Overview
- History 4
- Purpose 4
- Principles 4

The Role of the Fair Practices Office
- Overview of Process 5
- Differences Between the Fair Practices Office Mandate and the Appeal Mandate 6
- Typical Enquiries 7

Case Summaries 8

Recent Systemic Initiatives
- Training 10
- College of Physicians and Surgeons 10
- functional Capacity Evaluation 11
- Mitigation 11
- Healthcare Turnaround Times 11

Greetings from the Fair Practices Advocate

In accordance with Section 108.1(1) of the Workers Compensation Act, it is my pleasure to present the Fair Practices Office Annual Report for the year ending December 31, 2007.

Since its inception in 1989, Fair Practices Office staff have worked to assist both injured workers and employers with fairness issues related to timeliness, decisions, communication, staff responsiveness and the decision-making process.

The role of the Fair Practices Office is to listen to people carefully and then actively seek resolutions. The informal process used by the Fair Practices Office – and the willingness of WCB staff to address identified challenges – frequently results in employers' and workers' issues being resolved in a timely manner that provides positive results for all parties.

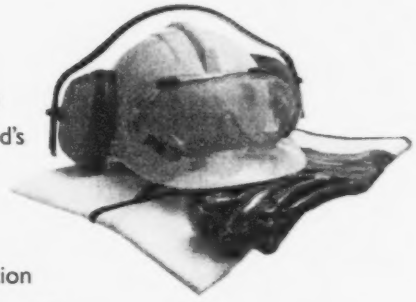
The Fair Practices Office had a busy year in 2007, with 482 issues being brought forward. However, it is gratifying to note that there has been a decrease over the last five years in the total number of issues brought forward (see page 7). This underscores the success of efforts made by the WCB to better serve all stakeholders.

I know that I speak for all staff of the Fair Practices Office when I say that it is our privilege to serve injured workers and employers in Manitoba and that we will continue to strive to meet their needs in 2008.

Pat Macgillivray
Fair Practices Advocate

Overview

History



The Fair Practices Office was established by the Workers Compensation Board of Manitoba (WCB) in 1989 to demonstrate and further the Board's commitment to quality service for injured workers and employers in Manitoba.

In 2006, changes to the Workers Compensation Act resulted in the addition of Section 108(1), which directs the WCB to have a Fair Practices Advocate. The legislation also establishes a reporting relationship between the Fair Practices Advocate and the WCB Board of Directors, which ensures a level of independence from the WCB administration.

Purpose

The purpose of the Fair Practices Office is three-fold:

- To provide an avenue for the identification and resolution of issues that lie outside of the appeal process mandate.
- To impartially examine complaints in order to assist workers and employers, and the WCB as a whole.
- To provide feedback to the WCB regarding system-wide issues that require attention and resolution.

Principles

In order to fulfill its role and promote fairness, the Fair Practices Office abides by the following three main principles:

- Impartiality – The Fair Practices Office is neutral in any matter brought to the Office. The Fair Practices Office reviews the issues objectively and will advocate for fair practice.
- Confidentiality – Issues brought to the Fair Practices Office are confidential unless there is a request for intervention by the person who raised the issue.
- Independence – The Fair Practices Office has complete independence to investigate matters brought forward and has unfettered access to all information in the possession of the WCB administration that has any bearing on the issue.

Role of the Fair Practices Office Process

Overview of Process

While the process varies, initial contact with the Fair Practices Office is most often made by phone.

If individuals bringing issues forward haven't already done so, they are encouraged, where appropriate, to address the issue with the WCB staff person most directly responsible for the issue. In these cases, complainants will be offered assistance to seek resolution at this level.

The Fair Practices Office will next assess whether there is an issue of fairness to be addressed. Part of this determination requires an examination for adherence to due process. To accomplish this, the Fair Practices Office considers the following:

- Has the case been investigated adequately?
- Has the individual had an opportunity to make their case and be heard by the decision maker?
- Is there a reasonable and logical connection between the facts of the case and the decision reached, and if so, has this been clearly explained?
- Is the decision consistent with WCB legislation and policy?
- If a mistake has been made, has it been acknowledged and, when possible, corrected?
- Has the WCB responded fairly and respectfully when an individual feels they have been treated poorly?

If the Fair Practices Office determines that there is not a fairness issue involved, this will be explained to the individual.

If there appears to be a fairness issue that requires further exploration, the typical process is as follows:

- The Fair Practices Office will contact WCB management staff to discuss steps to resolve the issue.
- If the issue remains unaddressed, the Fair Practices Office will approach senior management to discuss options for resolution.
- The caller will be contacted by the Fair Practices Office with the results.

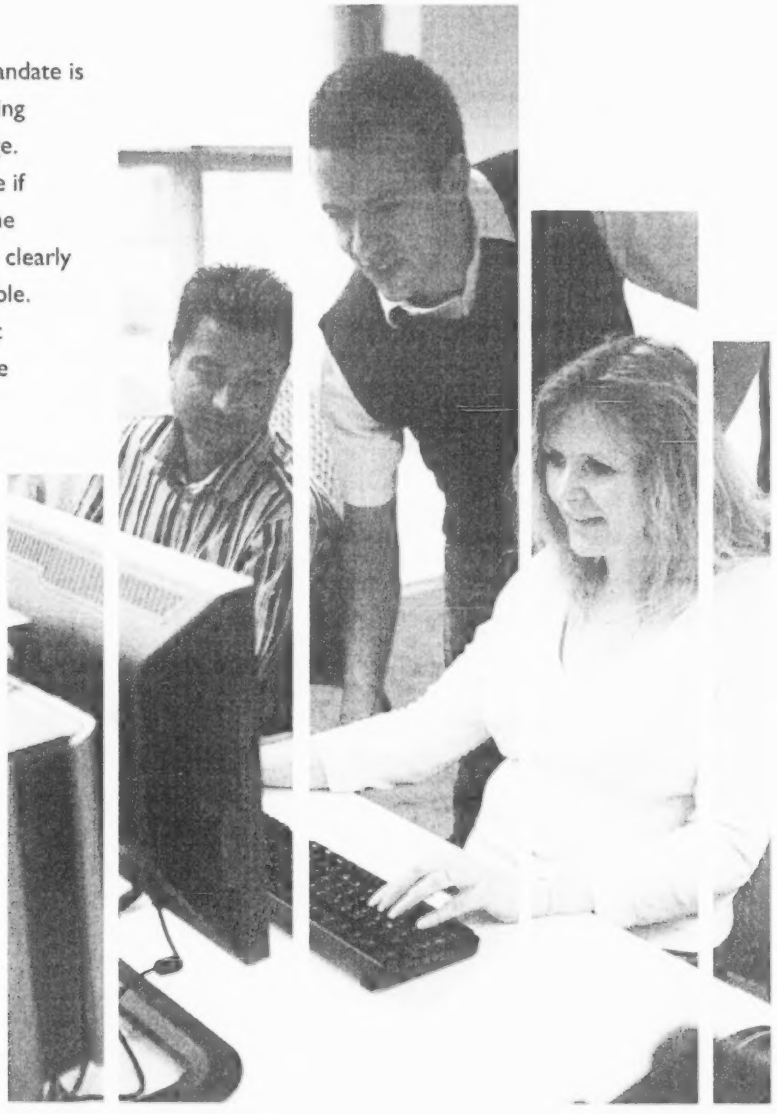
Differences Between the Fair Practices Office Mandate and the Review Office and Appeal Commission Mandate

The Fair Practices Office and Appeal mandates complement rather than duplicate one another. This is reflected in differences both in the range of issues dealt with and in the authority related to each of the mandates.

- ***Range of Issues Dealt With*** – Many of the issues brought to the Fair Practices Office lie outside of the Appeal mandate, such as the timeliness of adjudication and processing of benefits, courtesy and communication issues, and the need for apology when things have gone wrong.

- ***Authority to Make Recommendations vs. Changing Decisions*** – The Appeal mandate of the Review Office and the Appeal Commission gives each office the authority to change a decision if they believe the weight of the evidence, on a balance of probabilities, fails to support the decision.

  The Fair Practices Office mandate is narrower, restricted to making recommendations for change. Recommendations are made if the decision or actions of the WCB are determined to be clearly wrong or clearly unreasonable. This is a more stringent test than would be applied to the same issues through the Appeals process.



Typical Enquiries / Themes and Issues

While issues brought forward are diverse, there are overall themes within which issues generally fall. These are:

- ***Communication / Service*** – Clarity of information, unreturned phone calls and unprofessional conduct.
- ***Disagreements with Decisions*** – Disagreements related to claims management, benefits entitlement or termination of benefits.
- ***Inadequate Investigations*** – A decision has been made without gathering all relevant information.
- ***Unadjudicated Claims*** – Cases where injured workers are waiting to have their claim adjudicated and are without income.
- ***Process Delays*** – Timeliness of benefit cheques, medical aid expense payments, and medical aid authorization.
- ***Information*** – Injured workers or employers seeking information on legislation, board policy and procedure or claim status.

As indicated in the following table, there has been an encouraging decrease over the past few years in the number of issues brought forward overall.

Number of Issues Brought Forward 2003 – 2007
Overall and By Category of Complaint

Year	2003 Total	2004 Total	2005 Total	2006 Total	2007 Total
Communication / Service	220	214	197	114	121
Disagreement w/ Decisions	240	223	152	144	105
Unadjudicated Claims	69	58	26	31	19
Process Delays	87	104	62	49	43
Information	240	306	242	202	194
Total	**856**	**905**	**679**	**540**	**482**

Case Summaries

Case Summary 1

An injured worker contacted The Fair Practices Office about her overpayment situation. At the time of contact, her benefits were being reduced to facilitate recovery. While reviewing the WCB web site, the worker discovered that she had the right to appeal the overpayment and – that if she appealed within 30 days – recovery would be suspended pending a decision. She indicated that she had not been informed of this right and also that her case manager seemed unconcerned when questioned about the immediate commencement of recovery.

The injured worker had been informed that the overpayment resulted from a miscalculation of income from a concurrent job. The worker reported that she had informed the WCB of the concurrent job. She indicated that, in her opinion, the overpayment was the result of an administrative error, and – as noted in WCB policy – should not have been pursued.

Investigation by the Fair Practices Office determined that the injured worker had provided all needed information to the WCB and that she had a legitimate position regarding the overpayment being the result of an administrative error.

The investigation also identified a misapplication of policy related to concurrent employment. Additional findings were that the determination of overpayment was in error and that, in fact, no overpayment existed.

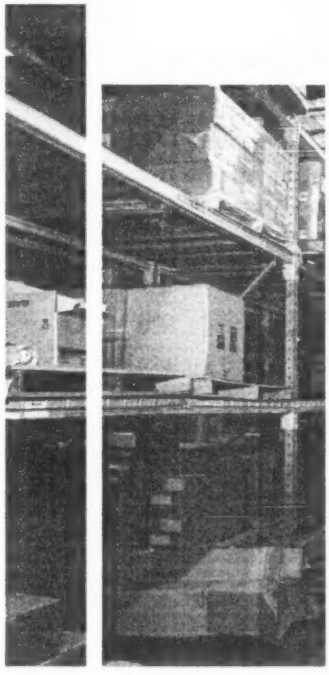
The Fair Practices Office intervened with the administration on the injured worker's behalf. The worker was immediately reimbursed for the amount that had been collected inappropriately and her benefits continued.

Case Summary 2

An injured worker contacted the Fair Practices Office to clarify the role of his treating physician in his injury claim. The worker expressed concern about his case manager ignoring his doctor's opinion regarding his restrictions. He asked the Fair Practices Office if his case manager's approach and actions were legitimate.

After reviewing his claim file, the Fair Practices Office advised the worker that the decision was ultimately the case manager's, barring use of Appeal mechanisms, but that there were principles and practices that should be followed.

The Fair Practices Office went over relevant WCB protocol and procedures with the worker. It was noted that a conversation should take place between a WCB healthcare



professional and the personal physician, in order that both parties learn from one another, and hopefully reach a consensus.

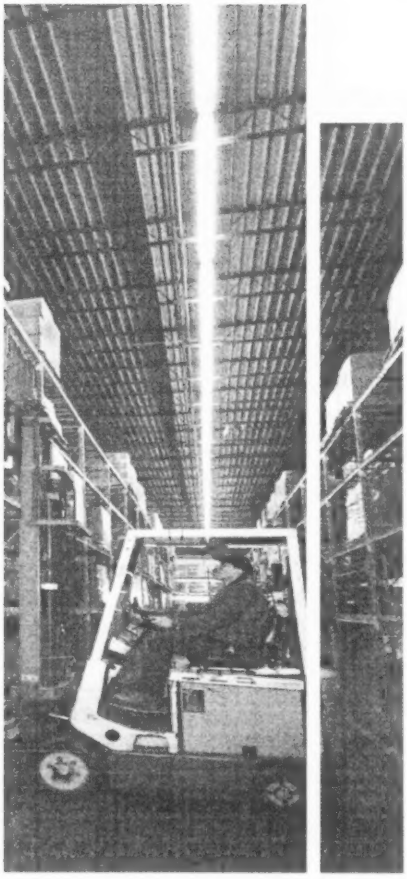
The worker was also informed that the case manager has a duty to consider all evidence available from all sources along with a duty to seek out any additional information that might assist in making a fair decision.

The injured worker felt that he had been helped to understand his options and the principles involved. He informed the Fair Practices Office that he wished to attempt to resolve the matter on his own.

Case Summary 3

An injured worker contacted the Fair Practices Office following the denial of her claim. As a manager of a clothing store, her job included not only typical managerial tasks, but lifting and unpacking heavy boxes, folding and hanging clothes. Her doctor had diagnosed her problem as right lateral epicondylitis.

A review of the claim file confirmed that the worker had provided a job description that included the physical nature of her work. The file indicated that the adjudicator had obtained a second job description from the company's head office in another province and that this job description focused on managerial tasks, and omitted the job's physical components. The adjudicator's decision appeared to have been based on the head office's job description.



Based on this information, the Fair Practices Office contacted the administration and asked for the claim to be reviewed and for further investigation into the job duties. Further investigation was undertaken, the claim was accepted and time loss benefits were paid. The WCB also reimbursed the injured worker for payments made to her physiotherapist.

Case Summary 4

An employer called the Fair Practices Office because his credit rating had been negatively affected after dealing with the WCB. At the time of his call, he had been unable to have his file corrected.

He reported that he had been assessed the year after his company closed. After notifying the WCB that he had gone out of business, he ignored their Notice of Assessment.

The Fair Practices Office contacted the Employer Services Division who confirmed the information provided by the employer. He attended the WCB the next day and was provided with a letter that explained his status with the WCB.

Recent Systemic Initiatives

The Fair Practices Office deals with a very small number of cases relative to the thousands of claims filed with the WCB annually. However, it is not uncommon for patterns to emerge that present opportunities for making systemic improvements. These patterns are reported to the WBC administration which then develops remedies to address the underlying issues. Over the past year, based, in part, on the work of the Fair Practices Office, initiatives have been undertaken that address systemic issues related to staff training, the timeliness of doctors reports, health reports, enhancing workers' understanding of functional capacity evaluations, and mitigation.

Training

The WCB has a training unit dedicated to identifying and responding to claims-related training needs. The unit is currently developing / implementing new training modules that address three areas in which the Fair Practices Offices receives a large percentage of its enquiries.

- ***Occupational Disease*** – The unit is developing additional training that will enhance staff competencies in addressing the complexities that exist in this challenging area of practice.
- ***Investigations for Claims Acceptance or Denial*** – The unit is placing specific emphasis on the importance of gathering all reasonable information in order to provide balanced claims adjudication.
- ***The Need For and Value of Apology*** – The unit has developed a module to assist staff in understanding the need for and value of apology in certain situations, particularly its capacity to move an unproductive relationship forward in a positive, mutually beneficial way.

This unit now provides a valuable contact point within the WCB where systemic issues can be brought forward.

College of Physicians and Surgeons

The timeliness of doctors' reports has emerged as an issue from time to time, and the Fair Practices Office raised this with the College of Physicians and Surgeons in a meeting held in late 2007.

The College was advised that delays in physician reports to the WCB can result in an injured worker not receiving timely wage loss benefits, medical treatment or necessary referrals. The College was supportive and intends to raise the issues in their next newsletter to physicians. The College also indicated that the issue would be raised on an annual basis to ensure that it is not forgotten.

Healthcare Turnaround Times

There have been instances where, in cases requiring WCB Healthcare Department consultation, opinions have not been timely. The result of this can be that injured workers wait too long for benefits, or remain on benefits when they should be returning to work. Both the individual cases and the systemic issue were discussed with the administration.

The administration has introduced additional resources in the Healthcare Department to address this problem.

Functional Capacity Evaluation

A number of injured workers came to the Fair Practices Office with concerns about adjudicative decisions resulting from WCB functional capacity evaluations. Concerns raised included evaluation results, the lack of a clear explanation of the process, and that, when workers followed instructions, these were later used against them.

The Fair Practices Office shared these concerns with the Director of the Healthcare Department. Changes were subsequently made in the process to facilitate the provision of appropriate information and instruction to workers.

Mitigation

There were issues brought to the Fair Practices Office in which the injured worker allegedly failed to 'mitigate' the effects of their injury. Investigation by the Fair Practices Office found that, in some cases, the injured worker did not fully understand WCB expectations regarding what would be best for them.

The WCB has a policy in place, *Practices Delaying a Workers Recovery* that, in part, emphasizes the need for due process to ensure that the injured worker fully understands what is expected of them, and the potential consequences of not acting accordingly. The Fair Practices Office found that these aspects of the guiding policy were not consistently followed.

The administration accepted this as an issue and subsequently made changes to the policy to clarify the steps to be taken before the negative consequences of the policy could be invoked. The Fair Practices Office has seen a reduction of issues involving this policy in the latter part of 2007.

To Contact the
FAIR PRACTICES OFFICE

Phone:

954-4467 (Winnipeg)

1-800-362-3340 (Toll Free)

Or Write:

Fair Practices Office
333 Broadway
Winnipeg MB R3C 4W3

Or Email:

fpo@wcb.mb.ca

Printed on recycled paper
with organic ink.
PRINTED IN CANADA